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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/463,470	01/21/2000	MORTEN SOEGAARD	P01938US0	6355

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EXAMINER

SAUNDERS, DAVID A

ART UNIT	PAPER NUMBER
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1644

DATE MAILED: 03/04/2003

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Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

463, 470

Applicant(s)

S O E GAARD et al

Examiner

SAUNDERS

Group Art Unit

1644

—The MAILING DATE of this communication appears on the cover sheet beneath the correspondence address—

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, such period shall, by default, expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).

## Status

- ☒ Responsive to communication(s) filed on 11/11/02.
- ☐ This action is FINAL.
- ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

## Disposition of Claims

- ☒ Claim(s) 35-84 is/are pending in the application.
- Of the above claim(s) 47-84 is/are withdrawn from consideration.
- ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- ☒ Claim(s) 35, 37 is/are rejected.
- ☒ Claim(s) 36 is/are objected to.
- ☒ Claim(s) 35-84 are subject to restriction or election requirement.

## Application Papers

- ☐ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.
- ☐ The proposed drawing correction, filed on \_\_\_\_\_ is ☐ approved ☐ disapproved.
- ☐ The drawing(s) filed on \_\_\_\_\_ is/are objected to by the Examiner.
- ☐ The specification is objected to by the Examiner.
- ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. § 119 (a)-(d)

- ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).
- ☐ All ☐ Some\* ☐ None of the CERTIFIED copies of the priority documents have been received.
- ☐ received in Application No. (Series Code/Serial Number) \_\_\_\_\_.
- ☐ received in this national stage application from the International Bureau (PCT Rule 1.7.2(a)).

\*Certified copies not received: \_\_\_\_\_.

## Attachment(s)

- ☐ Information Disclosure Statement(s), PTO-1449, Paper No(s). \_\_\_\_\_
- ☒ Notice of Reference(s) Cited, PTO-892
- ☐ Notice of Draftsperson's Patent Drawing Review, PTO-948
- ☐ Interview Summary, PTO-413
- ☐ Notice of Informal Patent Application, PTO-152
- ☐ Other \_\_\_\_\_

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The amendment of 11/11/02 has entered no new matter.

Claims 35-84 are pending. Claims 35-46 are under examination.

Applicant's response has indicated that a new declaration was filed with the response.

The examiner fails to find this.

The receipt of an abstract on a separate page is acknowledged.

The disclosure is objected to because of the following informalities: at page 1 applicant is required to insert information claiming priority to application 60/053,211 under 35 U.S.C. 119 (e) and to PCT/EP98/04219 under 35 U.S.C. 371.

Appropriate correction is required.

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Applicant's amendment has overcome previously stated rejections under 35 U.S.C. 112, first and second paragraphs.

The following prior art rejections are maintained:

Claims 35, 37-41 and 45-46 are rejected under 35 U.S.C. 103(a) as being unpatentable over Belfrage et al. (Immunology 90, 183-188, 1997), for reasons of record.

Claims 35, 37-38, 41 and 45-46 are rejected under 35 U.S.C. 102(a) as being anticipated by Lando et al. (J. Immunol., 157, 2857-2863, 1996) for reasons of record.

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Note Lando et al. is considered to be a 102(a) not a 102(b) reference, since it was pub. in Oct. 1996, less than one year prior 7/21/97.

The Kalland declaration filed on 11/11/02 is not effective in overcoming these references for the following reason(s):

1) It is executed by an applicant asserting derivation. MPEP 2132.01 indicates that, where derivation is being argued in the case of a publication having an applicant as a co-author, the declaration/avidavit must be executed by the other authors to establish that the relevant portion(s) of the publication were obtained from applicant.

2) A declaration may be executed by an applicant in accord with In re Katz 215 U.S.P.Q. 14. However, the Kalland declaration is clearly not intended to be a Katz declaration, because there are no statements that the other authors were under the training/supervision of the applicant.

Claims 35 and 37-46 are rejected under 35 U.S.C. 103(a) as being unpatentable over Belfrage et al. in view of Abrahmsen et al. (WO 96/01650) and Antonsson et al. (U.S. 6,514,498) for reasons of record.

Note the examiner has replaced Antonsson et al. (WO97/36932) as a reference with Antonsson et al. (U.S. 6,514,498). This U.S.

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reference has the same teachings as the WO reference; hence this is relied upon in the same manner as set forth in Paper 14.'

Applicant has urged that the 1.132 declaration of Kalland has removed the primary reference of Belfrage et al. For reasons stated supra the declaration does not.

Applicant has merely argued Belfrage et al. in view of Abrahmsen et al. by arguing the references in isolation and by vaguely arguing that there is no teaching or suggestion to combine. While there is no explicit, ipsi verbis teaching to combine, one would have nevertheless been motivated to combine their teachings for reasons stated in the prior Office action.

Applicant has urged nothing regarding teachings of Antonssen et al., because of its pub. Date. The U.S. reference is now cited.

Applicant's urgings filed on 11/11/02 have been considered but are unconvincing.

Receipt of the Belfrage thesis and of the Belfrage et al. publication (Cancer Immunol.. Immunother., 44, 77, 1997) is acknowledged.

Claims 35, 37-41 and 45-46 are rejected under 35 U.S.C. 103(a) as being unpatentable over Belfrage (Thesis, 1996).

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Belfrage teaches the co-treatment of tumors with SEA and with IL-2. At page 37 he suggests a strategy of enhancing T-cell activity against tumors while limiting the super induction of cytokines to only the tumor area, by virtue of employing IL-2 and a monoclonal antibody - SEA Fusion protein, such as Fab-SEA. This teaching falls within the scope of claim 35 as well as of dependent claims 37-41 and 45-46.

Claims 35 and 37-46 are rejected under 35 U.S.C. 103(a) as being unpatentable over Belfrage (Thesis) in view of Abrahmsen et al. (WO96/01650) and Antonsson et al. (U.S. 6,514,498).

The rational for combination follows that set forth previously in paper 14, pages 4-5, wherein Belfrage et al. (Immunology, 90, 183 1997) was employed as a primary reference.

The examiner has reviewed the Belfrage et al. Publication (Cancer Immunol.. Immunother. 44, 77, 1997) received 11/11/03.

This has no teachings applicable to the instant claims.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to David A. Saunders, Ph.D., whose telephone number is (703) 308-3976. The examiner can normally be reached on Monday-Thursday from 8:00 a.m. to 5:30 p.m. The examiner can also be reached on alternate Fridays.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Christina Chan, can be reached on (703) 308-3973. The fax phone number for the organization where this application or proceeding is assigned is (703) 308-4242.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0196.

D. Saunders:jmr

February 20, 2003

*David A. Saunders*  
DAVID SAUNDERS  
PRIMARY EXAMINER  
ART UNIT 182/644